

CONSENT ORDER

1. Birmingham Fire Insurance Company of Pa. (“Birmingham”) holds a certificate of authority which was duly and properly issued by the Washington state Insurance Commissioner. Birmingham is therefore governed by the provisions of Title 48 RCW, the Insurance Code. Specifically, it is authorized as a casualty insurer, among other lines of insurance.
2. In 1993, the Washington state legislature enacted chapter 48.87 RCW, “Midwives and Birth Centers- Joint Underwriting Association.” RCW 48.87.030 provided that the Insurance Commissioner was required to approve, by December 31, 1993, “a reasonable plan for the establishment of a nonprofit joint underwriting association (JUA)...for midwifery and birth center insurance subject to the conditions and limitations contained in this chapter.” RCW 48.87.040 provided that “The (JUA) association shall be comprised of all insurers possessing a certificate of authority to write and engaged in the writing of medical malpractice insurance within this state, and general casualty companies. Every insurer shall be a member of the (JUA) association and shall remain a member as a condition of its authority to continue to transact business in this state.” RCW 48.87.100 authorized the Insurance Commissioner to adopt “all rules necessary to ensure the efficient, equitable operation of the association.”
3. Pursuant to RCW 48.87.100, the Insurance Commissioner adopted rules, which are to be found in chapter 284-87 of the Washington Administrative Code (WAC), establishing a Joint Underwriting Association (JUA) for Midwifery and Birthing Centers Malpractice Insurance. WAC 284-87-050 (“Administration”), set up a governing board for the JUA. WAC 284-87-050, (“Assessments”) provides at (1) that “The board may calculate, levy and collect assessments from member insurers whenever necessary for the orderly operation of the (JUA).” WAC 284-87-070(4) provides that “Assessments are due thirty days after mailing. Any member insurer failing to remit its assessment when it is due is subject to revocation of its certificate of authority.”

4. On June 22, 2000, the JUA sent Birmingham a Notice of Assessment, requiring that the insurer send payment of a \$2500 assessment. The Notice also provided that "Assessments are due sixty days after mailing of the notice" and that "As provided in WAC 284-87-070(4), any insurer failing to remit its assessment is subject to revocation of its certificate of authority."

5. Since Birmingham had not paid its \$2500 assessment by August 24, 2000, the JUA sent a reminder letter to Birmingham, pointing out that the assessment was overdue. The reminder letter again pointed out that "...any insurer failing to remit its assessment when due is subject to revocation of its certificate of authority." From August 24, 2000, to the present, Birmingham has never paid its 2000 assessment of \$2500.

CONCLUSIONS OF LAW:

1. By failing to remit its 2000 assessment of \$2500, Birmingham violated WAC 284-87-070(4) and is subject to the revocation of its certificate of authority.

2. RCW 48.05.185 provides that "After hearing or with the consent of the insurer and in addition to or in lieu of the suspension, revocation or refusal to renew any certificate of authority, the commissioner may levy a fine upon the insurer in an amount not less than two hundred fifty dollars nor more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due, the commissioner shall revoke the certificate of authority if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general."

CONSENT TO ORDER:

1. Birmingham Fire Insurance Company of Pa. hereby admits and stipulates to the foregoing Findings of Fact and Conclusions of Law. In addition, it acknowledges its duty to comply with all applicable statutes and regulations of the state of Washington.

2. The Commissioner has offered a settlement of this matter, instead of suspending or revoking Birmingham's certificate of authority in Washington state. Birmingham wishes to accept this offer of settlement, in lieu of further proceedings in this matter.

3. By agreement of the parties, the Commissioner will impose a fine of \$5000, with \$4000 of that sum being suspended upon conditions set forth below. The unsuspended \$1000 must be paid in full within thirty days of the date this consent order is entered. If the \$1000 is not paid to the Insurance Commissioner of the state of Washington, in full by that date, this will constitute grounds for the revocation of the certificate of authority

which Birmingham holds in this state, and the entire amount of the fine, \$5000, will be recovered in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the state of Washington.

4. From the amount of the fine, \$5000, the sum of \$4000 will be suspended for sixty days after the date this consent order is entered, upon condition that Birmingham pay its 2000 \$2500 assessment to the Midwife JUA within 30 days after the date this order is entered. If Birmingham does not do so, then the suspended \$4000 will be due and payable sixty days after the date this order is entered. If that amount of \$4000 is not paid in full within sixty days of the date this order is entered, this will constitute grounds for revocation of the certificate of authority held by Birmingham in this state, and the amount of \$4000 will be recovered in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the state of Washington.

5. If Birmingham does pay the unsuspended \$1000 of the fine to the Insurance Commissioner of the state of Washington, and also pays its 2000 assessment of \$2500 to the Midwife JUA, by not later than thirty days after the entry of this order, then the Insurance Commissioner will waive the suspended \$4000 of the fine.

SIGNED AND AGREED this 28th day of June, 2002.

BIRMINGHAM FIRE INSURANCE COMPANY OF PA.

By _____

Typed Name _____

Typed Corporate Title _____

ORDER:

1. Pursuant to RCW 48.05.185, the Insurance Commissioner hereby imposes a fine of \$5000 (five thousand dollars and no/100) upon Birmingham Fire Insurance Company of Pa. Of this amount, the sum of \$4000 (four thousand dollars and no/100) shall be suspended upon conditions set forth below. The unsuspended \$1000 (one thousand dollars and no/100) must be paid in full to the Insurance Commissioner of the state of Washington, within thirty days of the entry of this order. If the unsuspended \$1000 is not paid in full to the Insurance Commissioner of the state of Washington by that date, this will constitute grounds for the revocation of the certificate of authority held by Birmingham Fire Insurance Company of Pa., and the full amount of the fine, \$5000, will be recovered in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the state of Washington.

2. From the amount of the fine, \$5000, the sum of \$4000 will be suspended for sixty days after this consent order is entered, upon condition that Birmingham Fire Insurance Company of Pa. pay its 2000 assessment of \$2500 to the Midwife JUA within thirty days after the date this order is entered. If the \$2500 is not paid to the Midwife JUA within thirty days after the entry of this order, and if the amount of \$4000 is also not paid in full to the Insurance Commissioner of the state of Washington, within sixty days after the entry of this order, then this will constitute grounds for the revocation of the certificate of authority held by Birmingham in the state of Washington, and the amount of \$4000 (four thousand dollars and no/100) will be recovered in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the state of Washington.

3. If Birmingham Fire Insurance Company of Pa. does pay the unsuspended \$1000 to the Insurance Commissioner of the state of Washington, and also does pay its 2000 assessment of \$2500 to the Midwife JUA, both within thirty days of the entry of this order, then the Insurance Commissioner will waive the suspended \$4000.

ENTERED AT TUMWATER, WASHINGTON, this 3rd day of July, 2002.

MIKE KREIDLER
Insurance Commissioner

William Kirby
Legal Affairs Division